

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN RICHARD JAE,)
)
Plaintiff,)
)
vs.) **Civil No. 20-cv-1189**
)
ALLEGHNEY COUNTY JAIL)
MEDICAL STAFF, DR. STECHSHULTE)
Medical Director- Allegheny County Jail,)
WARDEN HARPER, CHIEF DEPUTY)
WARDEN L. WILLIAMS, SGT. LEE,)
and ALLEGHENY COUNTY,)
)
Defendants.)

OPINION and ORDER

This case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72. The Magistrate judge issued a Report and Recommendation, filed August 12, 2020, recommending that Plaintiff's Motion for Leave to Proceed in forma pauperis be denied in accordance with 28 USC 1915(g), and that this action be dismissed without prejudice until such time that Plaintiff pays the full \$400.00 filing fee. ECF No. 5. Plaintiff has filed Objections to the Report and Recommendation. ECF No. 7. For the reasons that follow, after *de novo* review, the Court finds that Plaintiff's objections do not undermine the recommendation of the Magistrate Judge. The motion for injunctive relief will be denied and the Report and Recommendation will be adopted as the Opinion of the court, as supplemented herein.

Plaintiff objects to the Magistrate Judge's finding that Plaintiff made only one claim that might be construed as placing him in imminent danger of serious physical injury. The allegations

in support of that claim are that he must go without his heart and high blood pressure medications for several days at a time due to the Allegheny County Jail's policy of ordering such medications only for thirty days at a time. He further alleges that such conduct places him in imminent danger of suffering a heart attack, stroke, or death. Plaintiff does not appear to object to the conclusion that said allegations do not amount to imminent danger of serious physical injury. To the extent he does object, the Court finds no error with the Magistrate Judge's conclusion regarding said allegations.

Plaintiff specifically objects to the Magistrate Judge's failure to find that he has alleged that he is in imminent danger of serious physical injury based on his allegation that Dr. Stechshulte refuses to send him out to see an ophthalmologist for his cataracts because the jail considers procedures for this condition to be elective and not medically necessary. Plaintiff claims that this allegation is sufficient to show that he is in imminent danger of losing his eyesight. Plaintiff, however, cannot allege that his risk of losing his eyesight is imminent. Imminent dangers are those dangers which are about to occur at any moment or are impending. Abdul-Akbar v. McKelvie, 239 F.3d 307, 315 (3d Cir. 2001). At best, he alleges that he might lose his vision in weeks, months, or years. Thus, his allegation is speculative and not suggestive of an imminent, impending harm. Accordingly, the Court finds that said allegation does not amount to imminent danger of serious physical injury.

Because Plaintiff has had three qualifying dismissals and he has not shown that Defendants' actions have placed him in imminent danger of serious physical injury, the Court will deny Plaintiff's application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g).

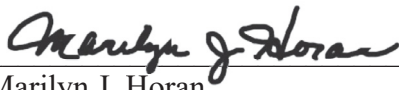
Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 14th day of September, 2020, it is hereby ORDERED as follows:

The Magistrate Judge's Report and Recommendation, ECF No.5, dated August 12, 2020, is adopted as the Opinion of the Court, as supplemented herein

Plaintiff's Motion for Leave to Proceed in Forma Pauperis (ECF No. 1) is DENIED, and this action is dismissed without prejudice to Plaintiff's right to reopen it by paying the full \$400.00 filing fee.

IT IS SO ORDERED.


Marilyn J. Horan
United States District Court Judge

cc: John Richard Jae
DOC and POD #2183 5F
Allegheny County Jail
950 Second Ave.
Pittsburgh, PA 15219-3100
(via U.S. First Class Mail)

All Counsel of Record
(via ECF electronic notification)